

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

National Pasteurized Eggs, LLC,)
)
Plaintiff,)
) Case No.: 1:07-CV-103-JL
v.)
)
L. John Davidson,)
)
Defendant.)
)

PLAINTIFF'S MOTION FOR RECONSIDERATION

National Pasteurized Eggs, LLC (“NPE”), by its attorneys, Preti, Flaherty, Beliveau & Pachios, PLLP and D.W. Toone and Associates, PLLC, respectfully submits the within Motion for Reconsideration pursuant to LR 7.2(e), and in support thereof, represents as follows:

1. The Court denied without prejudice the pending motion to dismiss Defendant’s Counterclaim (Doc. No. 52), Plaintiff’s Motion for Summary Judgment (Doc. No. 65) and Defendant’s Motion for Summary Judgment (Doc. No. 79), until the status of Davidson’s counsel has been established. NPE moves to reconsider the Court’s order as Attorney Bordeau has not withdrawn and will not withdraw until the summary judgment pleadings are completed on or before September 22, 2010. Defendant has the opportunity to file a Reply to Plaintiff’s Objection to Defendant’s Summary Judgment Motion by the September 22 deadline.

2. Defendant’s counsel agreed not to withdraw until he had filed the Reply. On August 13, 2010 Paul C. Bordeau, Esq. moved to withdraw as Defendant’s counsel and indicated “Counsel will not file a withdrawal prior to the expiration of the 14 days allowed by the June 9, 2010 Procedural Order for defendant to reply to plaintiff’s expected objection to defendant’s

pending motion for summary judgment.” Motion for Leave to Withdraw as Defendant’s Counsel (Doc. No. 98), ¶ 3. The Certificate of Service indicates Mr. Davidson was copied on the Motion and it has been represented that this issue has been discussed with him.

3. Plaintiff assented to the withdrawal of Attorney Bordeau based on the representation that counsel’s withdrawal would not impact the scheduled deposition of Mr. Davidson (which did take place on August 24 & 25 with Attorney Bordeau serving as Davidson’s counsel) or the timing of the summary judgment filings. See Plaintiff’s Response to Motion for Leave to Withdraw as Defendant’s Counsel (Doc. No. 99), ¶ 4.

4. The parties and counsel agreed that Attorney Bordeau may withdraw provided the summary judgment schedule is not altered and have proceeded in that fashion. Accordingly, Plaintiff requests the Court reconsider its September 14, 2010 Order denying Plaintiff’s Motion to Dismiss Defendant’s Counterclaim and denying both Plaintiff’s and Defendant’s Motions for Summary Judgment, without prejudice, and amend it as follows: Attorney Bordeau shall file Defendant’s Reply to Plaintiff’s Summary Judgment Objection, if any, on or before September 22, 2010; Attorney Bordeau shall file his Withdrawal upon the filing of the Reply or the passage of the September 22, 2010 deadline; Mr. Davidson shall comply with the Court’s August 27, 2010 Order regarding the filing of an Appearance by October 18, 2010; and the Court will consider and rule on the three pending motions upon the earlier of the filing of an Appearance for Defendant or October 18, 2010.

5. Attorney Bordeau was asked for his assent to this Motion, but he had not yet responded by the time of filing.

6. No memorandum of law is submitted as the matter is within the discretion of the Court.

WHEREFORE, for the reasons set forth above, NPE respectfully requests that this

Honorable Court:

A. Grant this Motion and modify its September 14, 2010 Order denying Plaintiff's Motion to Dismiss Defendant's Counterclaim and denying both Plaintiff's and Defendant's Motions for Summary Judgment, without prejudice, to require that Attorney Bordeau file Defendant's Reply, if any, by September 22, 2010, that Mr. Davidson comply with the Court's August 27, 2010 Order and appear on his own or through counsel by October 18, 2010 and that the Court will consider and rule upon the three pending motions upon the earlier of an Appearance for Defendant or October 18, 2010; and

B. Grant such other relief as may be just and proper.

Respectfully submitted,

NATIONAL PASTEURIZED EGGS, LLC

By its attorneys,

PRETI FLAHERTY BELIVEAU & PACHIOS,
PLLP

Dated: September 15, 2010

/s/ Peter G. Callaghan

Peter G. Callaghan, NH Bar #6811
P.O. Box 1318
Concord, NH 03302-1318
(603) 410-1500
pcallaghan@preti.com

D.W. TOONE & ASSOCIATES, PLLC

/s/ D. William Toone

D. William Toone
15327 - 184th Place NE
Woodinville, WA 98072
(206) 331-8834
bill@dwtoonelaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September 2010 copies of the foregoing *Motion for Reconsideration* were served on all counsel of record electronically via ECF.

/s/ Peter G. Callaghan
Peter G. Callaghan